



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2020-0426; FRL-8421-02-OW]

Proposed 2022 Clean Water Act Financial Capability Assessment Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: When municipal discharges cause violations of the Clean Water Act (CWA), EPA sets a schedule for the municipality to address them as soon as possible. When developing schedules to implement the control measures, EPA considers factors such as public health, environmental protection, and a community's financial capability. The Proposed 2022 Financial Capability Assessment (FCA) Guidance describes the financial information and formulas the Agency intends to use to assess the financial resources a community has available to implement control measures. The Proposed 2022 FCA directly incorporates relevant portions of the 1997 *Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development* (1997 FCA Guidance) and EPA's 2014 *Financial Capability Assessment Framework for Municipal Clean Water Act Requirements* (2014 FCA Framework) as Appendices. Once finalized, EPA intends for the Proposed 2022 FCA to replace the 1997 FCA Guidance to evaluate a community's capability to fund CWA control measures in both the permitting and enforcement context. Additionally, EPA intends Section IV.g of the 2022 FCA to assist states and authorized tribes in the consideration of economic impacts to public entities for supporting revisions to designated uses, water quality standard (WQS) variances, and antidegradation reviews for high quality waters. The Proposed 2022 FCA reflects EPA's consideration of public comments received in response to its September 18, 2020 *Federal*

Register publication. The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2020–0426, by the following method:

- Federal eRulemaking portal: <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this guidance.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the guidance process, see the “Request for Public Comments” heading of the SUPPLEMENTARY INFORMATION section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID-19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Sonia Brubaker, Office of Wastewater Management, Water Infrastructure Division (MC4204M), Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC, 20460; telephone number: (202) 564-0120; email address: brubaker.sonia@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. Purpose of the Proposed 2022 Financial Capability Assessment Guidance
- II. Changes from the September 2020 Proposed FCA Guidance
- III. Overview of the Proposed 2022 FCA Guidance
- IV. Request for Public Comments

EPA'S PROPOSED 2022 FINANCIAL CAPABILITY ASSESSMENT GUIDANCE

I. Purpose of the Proposed 2022 Financial Capability Assessment Guidance

The Proposed 2022 FCA advances the ability of communities to more thoroughly demonstrate the financial impacts they face and increases the transparency of EPA's considerations as it endeavors to consistently apply FCA methodologies across the country. The Proposed 2022 FCA allows communities to submit more consistent and comprehensive information relevant to the entire community's capability to fund CWA control measures and programs. Specifically, the Proposed 2022 FCA includes templates and calculations that communities can use to submit information regarding lowest quintile income (LQI), drinking water costs, financial models or studies, and other relevant information. The templates and calculations include references to publicly available data sources that can be used in compiling this information.

The Proposed 2022 FCA sets forth two alternative approaches for assessing a community's financial capability to carry out CWA control measures. The first alternative is the existing 1997 FCA methodology with expanded consideration of lowest quintile income and poverty in the service area. The second alternative is the development of a dynamic financial and rate model that looks at the impacts of rate increases over time on utility customers.

Additionally, EPA recommends the application of the methodologies from Alternative 1 of the Proposed 2022 FCA to the consideration of economic impacts to public entities when making decisions on WQS variances and antidegradation reviews. In appropriate cases, these

methodologies also inform decisions about revisions to designated uses, subject to additional analyses.

EPA is proposing to base its FCA metrics on data that is available in the American Community Survey (ACS). The ACS is conducted every year by the U.S. Census Bureau to provide up-to-date information about the social and economic conditions of communities. The annual updates include key socio-demographic information at an appropriate geographic scale with historic continuity. The ACS can produce data showing the quintiles of household income (each quintile defines the household income range for 20% of a community's households). The 2022 Proposed FCA metrics meet the following criteria recommended by the National Academy of Public Administration (NAPA):¹

- Readily available from publicly available data sources;
- Clearly defined and understood;
- Simple, direct, and consistent;
- Valid and reliable measures, according to conventional research standards; and
- Applicable for comparative analyses among permittees.

The 2022 Proposed FCA strengthens both CWA protections and water service affordability protections. For the first time, EPA may ask municipalities negotiating compliance schedules and certain WQS revisions to affirmatively demonstrate actions to reduce or mitigate the financial impact of water service costs on the lowest quintile households and to achieve compliance as expeditiously as possible.

II. Changes from the September 2020 Proposed FCA Guidance

On September 18, 2020, EPA published a Proposed *2020 Financial Capability Assessment for Clean Water Act Obligations* (Proposed 2020 FCA) in the Federal Register for notice and

¹ NAPA issued a report titled “Developing a New Framework for Community Affordability of Clean Water Services” in October 2017.

public comment.² On January 12, 2021, EPA posted a pre-publication version of the FCA Guidance on the Agency’s website. The pre-publication FCA was never published in the Federal Register and was withdrawn for review and approval in accordance with the January 20, 2021 White House Memorandum, *Regulatory Freeze Pending Review*.³ The Proposed 2022 FCA reflects EPA’s consideration of public comments received in response to its September 2020 Federal Register publication, as well as feedback received through various stakeholder outreach sessions since then. The three major changes from the Proposed 2020 FCA are outlined below.

1. Consideration of Lowest Quintile Households and Poverty Indicators

EPA originally proposed to add two new FCA metrics, the Lowest Quintile Residential Indicator (LQRI) and the Poverty Indicator (PI). The LQRI was intended to evaluate the financial impact of CWA costs on lowest quintile households in a community by calculating the ratio of adjusted costs per lowest quintile household to the service area’s lowest quintile income.

While commenters were supportive of the new poverty measures, many expressed concerns about the methodology proposed to scale the costs for lowest quintile households and the proposed LQRI thresholds. A number of community-specific factors—such as age of infrastructure, housing type, and efficiency of water appliances—may impact water usage and costs to lowest quintile households. In addition, if the community charges residential customers on a fixed rate structure, i.e., low-volume households receive the same bill as high-volume households, a metric that scales down estimates of cost based on projected water use would not be appropriate.

EPA recognizes that considering lowest quintile income is an important measure to supplement existing FCA metrics. Median household income (MHI) does not account for the variability of income distribution from community to community. Even when communities have a similar MHI, infrastructure investments could have a greater financial impact on low-income

² See 85 FR 58352 (September 18, 2020).

³ See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/>.

households in certain situations, such as when there is a wide distribution between the highest and lowest income customers. For this reason, EPA is proposing two simplified Proposed Options to assess the severity and prevalence of poverty in a community's service area. EPA is seeking comment on both Proposed Options, but only one of the Proposed Options is to be included in the final 2022 FCA Guidance. Both Options consider the community's lowest quintile income as benchmarked against the national lowest quintile income, as well as five poverty indicators:

- Percentage of Population with Income Below 200% of Federal Poverty Level;
- Percentage of Population Receiving Food Stamps/SNAP Benefits;
- Percentage of Vacant Households;
- Trend in Household Growth; and
- Percentage of Unemployed Population 16 and Over in Civilian Labor Force.

EPA has determined that the methodology of either Option 1 or 2 would enable EPA to distinguish between two communities with similar MHI but different levels of poverty.

Proposed Option 1 for Comment: This Option would add a single new metric to the assessment, the Lowest Quintile Poverty Indicator (LQPI) to be considered with the Residential Indicator and Financial Capability Indicator. The LQPI would combine a lowest quintile income element with poverty indicator elements. To ensure that both the severity and prevalence of poverty are reflected in the LQPI metric, EPA would give equal weight to the LQI (50%) and the five prevalence of poverty indicators (weighted at 10% each for a total of 50%).

Under Proposed Option 1, Residential Indicator and Financial Capability Indicator would be combined in a matrix to determine an FCA Score. An Initial LQPI Score would be calculated, and adjusted based on a Financial Alternatives Analysis, if appropriate. Finally, the FCA Score and Final LQPI Score would be combined in the Expanded FCA Matrix to provide the final FCA result.

Proposed Option 2 for Comment: This Option would add two new metrics, the Lowest Quintile Income Indicator (LQII) and the Poverty Indicator (PI) to be considered with the Residential Indicator and Financial Capability Indicator. The LQII is the lowest quintile income metric, and the PI is a separate metric based on the average score of the five prevalence of poverty indicators.

Under Proposed Option 2, the Residential Indicator and Financial Capability Indicator would be combined in a matrix to determine an FCA Score. Then, LQII and PI would be each calculated separately. The LQII and PI would be combined in a matrix to determine an Initial LQPI Score. The Initial LQPI Score would be adjusted based on a Financial Alternatives Analysis, if appropriate. Finally, the FCA Score and Final LQPI Score would be combined in the Expanded FCA Matrix to provide the final FCA result.

Summary of Section IV.b of the Proposed 2022 FCA: Step 3 Shows Two Proposed Options for Consideration of Lowest Quintile Income and Poverty Indicators	
Step 1: Calculate Residential Indicator	
Step 2: Calculate Financial Capability Indicator	
Step 3: Calculate Initial Lowest Quintile Poverty Indicator Score – Two Proposed Options	
<p><i><u>Step 3 Under Proposed Option 1</u></i></p> <p>Calculate Initial Lowest Quintile Poverty Indicator Score based on the six elements below:</p> <ul style="list-style-type: none"> • Lowest Quintile Income benchmarked to National LQI – 50% of score • Percentage of Unemployed Population 16 and Over in Civilian Labor Force - 10% of score • Percentage of Population Living Under 200% of Poverty Level - 10% of score • Percentage of Population Receiving Food Stamps/SNAP Benefits - 10% of score 	<p><i><u>Step 3 Under Proposed Option 2</u></i></p> <p>First, calculate the Lowest Quintile Income Indicator Score (i.e., community's Lowest Quintile Income benchmarked to the National LQI).</p> <p>Then, average the five poverty elements below to determine the Poverty Indicator Score:</p> <ul style="list-style-type: none"> • Percentage of Unemployed Population 16 and Over in Civilian Labor Force • Percentage of Population Living Under 200% of Poverty Level • Percentage of Population Receiving Food Stamps/SNAP Benefits • Percentage of Vacant Households

<ul style="list-style-type: none"> • Percentage of Vacant Households - 10% of score • Trend in Household Growth - 10% of score 	<ul style="list-style-type: none"> • Trend in Household Growth <p>Finally, combine the LQI and PI in the Initial LQPI Matrix to determine the Initial LQPI Score.</p>
Step 4: Perform Financial Alternatives Analysis if Initial LQPI Score is “medium” impact or “high” impact	
Step 5: Determine Final LQPI Score	
Step 6: First, combine RI and FCI to determine Financial Capability Matrix Score. Then, combine Financial Capability Matrix Score and Final LQPI Score to determine Expanded Financial Capability Assessment Matrix Score.	

2. Addition of Financial Alternatives Analysis

Where CWA compliance costs may have an impact on a community’s residents with incomes in the lowest quintile, a longer schedule may not always be the best solution to address impacts to those residents. In particular, if a community shows strong economic indicators in other categories, there may be better options for the community to address the potential financial burden faced by its lowest quintile residents.⁴ If the intended goal is to help a community’s lowest income residents, an extended CWA schedule may in fact have the opposite effect if it delays addressing pollution in the neighborhoods where they live.

Use of variable rate structures, customer assistance programs, and applications for grants or subsidies from the Clean Water State Revolving Fund (CWSRF) are all potential tools to enable shorter compliance schedules by allowing increased total spending on compliance without burdening low-income customers. Federal funding initiatives and programs such as the Bipartisan Infrastructure Law (BIL), American Rescue Plan Act (ARPA), State Revolving Loan Funds (SRFs), Water Infrastructure Finance and Innovation Act (WIFIA) and others provide

⁴ The CSO Policy identifies three additional financial considerations for negotiating implementation schedules: grant and loan availability; previous and current residential, commercial and industrial sewer user fees and rate structures; and other viable funding mechanisms and sources of financing. See 59 FR 18688, 18694 (April 19, 1994).

billions of dollars for state, local, territorial, and tribal governments. For instance, the Bipartisan Infrastructure Law has provided \$11.7 billion in additional funds to the CWSRF. The state match requirement has been reduced to 10% for the first two years and 49% of the money will be provided as grants or principal forgiveness loans to communities. These resources create a historic opportunity for communities to address long-standing challenges. In addition, shorter compliance schedules provide water quality and public health improvements that deliver important social, environmental, and economic benefits to the community. For these reasons, EPA does not intend to provide extended CWA compliance schedules or greater consideration for WQS decisions unless the community demonstrates that it has taken all feasible steps to reduce or mitigate the financial impact of water service costs on the lowest quintile households and to achieve compliance as expeditiously as possible. In evaluating this demonstration, EPA expects to look comprehensively at the community's financial strategy, including, but not limited to, an analysis of the community's approach to covering costs through rate structure and design as well as its other initiatives to assist low-income customers while assuring necessary and timely compliance with environmental requirements.

3. Modification of Scheduling Benchmarks

The Proposed 2020 FCA provided that communities with “medium” FCA impacts could qualify for compliance schedules of up to 15 years and “high” impact communities could receive compliance schedules up to 25 years, or as long as the useful life of the CSO controls for unusually high impacts. For users of the Proposed 2022 FCA, it is more transparent and consistent to define a recommended scheduling boundary rather than retain the “useful life” language. It is important to consider human health and environmental impacts as well as cost when considering extended schedules. EPA is also mindful that prolonging water quality impairments could exacerbate environmental justice concerns. EPA believes that, for unusually high impacts, 25 years is a reasonable recommended scheduling benchmark that is more consistent with environmental protection and the Agency's past FCA practice.

EPA proposes to revise the FCA guidance to keep 15 years as the outer recommended boundary for “medium” impact communities and change the benchmark for “high” impact communities to 20 years, or up to 25 years for unusually high impacts, but is seeking comment on whether these are appropriate recommended scheduling boundaries.

III. Overview of the Proposed 2022 FCA Guidance

The 2022 FCA Guidance recommends two alternative approaches for assessing a community’s financial capability to carry out CWA control measures. The first alternative is the existing 1997 FCA methodology with expanded consideration of poverty and impacts on the population in the service area with incomes in the lowest quintile. EPA is retaining the 1997 Residential Indicator (i.e., 2% of MHI) and the Financial Capability Indicator because they measure factors required under the Clean Water Act by the CSO Policy as part of a financial capability assessment.⁵ These indicators also allow for consistent comparative analysis among communities. The new critical metric, the Lowest Quintile Poverty Indicator (LQPI), allows the Agency to assess severity and prevalence of poverty. The second alternative is the development of a dynamic financial and rate model that looks at the impacts of rate increases over time on utility customers.

Both alternatives permit consideration of other metrics and may support an extended implementation schedule. Nonetheless, EPA does not anticipate establishing implementation schedules that would exceed 20 years, or up to 25 years for communities that demonstrate unusually high impacts. The Proposed 2022 FCA can help to ensure that local challenges related to low-income households are better reflected in CWA implementation schedules. Consistent

⁵ The Clean Water Act requires that each permit, order, or decree for a discharge from a municipal combined storm and sanitary sewer conform to the CSO Policy. 33 U.S.C. 1342(q). The CSO Policy lists the following considerations for financial capability: median household income; total annual wastewater and CSO control costs per household as a percent of median household income; overall net debt as a percent of full market property value; property tax revenues as a percent of full market property value; property tax collection rate; unemployment; and bond rating. See 59 FR 18688, 18694 (April 19, 1994).

with previous policy, EPA plans to consider any relevant financial or demographic information presented that illustrates the unique or atypical circumstances faced by a community. The Proposed 2022 FCA is available at: <https://www.regulations.gov/>, Docket ID No. EPA-HQ-OW-2020-0426.

Additionally, EPA recommends application of the methodologies from the Proposed 2022 FCA to the consideration of economic impacts to public entities for supporting revisions to designated uses, WQS variances, and antidegradation reviews for WQS. EPA intends that the recommended expanded matrix for WQS decisions in the Proposed 2022 FCA, once finalized, along with the electronic spreadsheet tools for the public sector,⁶ would replace the worksheets and calculations for the public sector sections of the 1995 *Interim Economic Guidance for Water Quality Standards*. The Proposed 2022 FCA does not revise the recommended methodology in the private sector sections of the 1995 WQS Guidance.

IV. Request for Public Comments

EPA requests public comment on the Proposed 2022 FCA. Specifically, EPA is requesting comment on the following:

1. Should the Final 2022 FCA incorporate a single new metric—LQPI—that considers lowest quintile income and poverty elements together? Or should the Final 2022 FCA incorporate two new metrics (a lowest quintile income indicator and a poverty indicator) to be calculated separately and combined in a matrix?
2. EPA is seeking additional examples or case studies of funding and financing considerations to add to Appendix C.
3. EPA is seeking feedback on the current proposed scheduling benchmarks of 20 years for “high” Expanded FCA Matrix impacts, or 25 years for unusually high impacts. If

⁶ These electronic spreadsheet tools for the public sector, available at <https://www.epa.gov/wqs-tech/spreadsheet-tools-evaluate-economic-impacts-public-sector>, encompass the data inputs and calculations of the 1995 *Interim Economic Guidance for Water Quality Standards*.

commentors propose different benchmarks, EPA is requesting examples to support the basis for such benchmarks.

Dated: February 10, 2022.

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